

AMENDMENTS TO THE DRAWINGS:

The attached replacement sheet includes minor changes to Fig. 2. This replacement sheet, which includes Figs. 1-3, replaces the original sheet including Figs. 1-3. In Fig. 2, Applicant has added dashed lines to provide an exemplary illustration of the detachability of elements 210-240. See pages 11-15 of this amendment for Applicant's traversal of the Examiner's rejection to the drawings.

REMARKS

This Amendment, submitted in response to the Office Action dated March 2, 2005, is believed to be fully responsive to each point of rejection raised therein. Accordingly, favorable reconsideration is respectfully requested.

The Examiner has acknowledged Applicant's claim for domestic priority under 35 U.S.C. § 119(e). The drawings are objected to under 37 CFR 1.83(a) for failing to show the detachability of the plate, ring piece, and/or first mounting piece. The Abstract is objected to for containing the language "is provided." The specification is objected to for containing informalities. Claims 1-14 are pending in the application. Claim 3 is rejected under 35 U.S.C. § 112, first paragraph; claims 2-10 and 14 are rejected under 35 U.S.C. § 112, second paragraph; claims 1, 2, 4-6, and 9-14 are rejected under 35 U.S.C. § 102(b) as being anticipated by Barbour (U.S. Patent No. 2,074,248); and claims 7 and 8 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Barbour.

Applicant has added new claims 19-31. Claims 23, 27, and 29 are independent claims. No new matter has been added.

INTERVIEW

An interview was conducted with the Examiner on June 29, 2005, to address the above objections and rejections. Regarding the objection to the abstract for containing the language "is provided", the Examiner insisted that Applicant remove the language. Although Applicant respectfully notes that the patent laws, patent rules, and MPEP do

not require such an amendment¹, Applicant agreed to delete the language "is provided" from the abstract in the interest of furthering the prosecution of the application toward allowance.

Regarding the objection to the specification at paragraph 19, lines 2-4, the Examiner agreed to Applicant's proposed amendment to replace the typographical error of the phrase "the basket holder 110" at the end of the sentence with "each other," which does not add any new matter based on other existing statements in the specification, such as the next sentence in the paragraph. Applicant further agreed to correct the apparent typographical error at paragraph 19, line 5 as suggested by the Examiner.

Applicant has also amended the typographical errors of claims 10, 12, and 14.

During the interview the Examiner criticized that Applicant's claims contained only two elements and noted that claims of that length are rarely allowed. However, whether or not an applicant's claims are simple, "Simplicity is not inimical to patentability." In re Oetiker, 977 F.2d 1443, 1447, 24 USPQ2d 1443, 1446 (Fed. Cir. 1992) (also citing, Goodyear Tire & Rubber Co. v. Ray-O-Vac Co., 321 U.S. 275, 279, 60 USPQ 386, 388 (1944) (**simplicity of itself does not negate invention**); Panduit Corp. v. Dennison Mfg Co., 810 F.2d 1561, 1572, 1 USPQ2d 1593, 1600 (Fed. Cir. 1987) (**the patent system is not foreclosed to those who make simple inventions**)).

¹ Applicant's original abstract meets the requirements set forth in 37 CFR 1.72(b) and MPEP 608.01(b); it is concise, in narrative form, and falls within the suggested range of 50 to 150 words. Applicant notes that the sample abstract provided at MPEP 608.1(b)(E)(3) includes the similar phrase "are produced."

Applicant submits the following arguments in traversal of the remaining objections and rejections.

THE DRAWINGS:

Claim 3, a dependent claim, recites that “any combination of the plate, the ring piece, and the first mounting piece are detachable.” The Examiner has objected to the drawings under 37 CFR 1.83(a) because they do not show this feature.

37 CFR 1.83(a) provides:

The drawing in a nonprovisional application must show every feature of the invention specified in the claims. **However, conventional features disclosed in the description and claims, where their detailed illustration is not essential for a proper understanding of the invention, should be illustrated in the drawing in the form of a graphical drawing symbol or a labeled representation (e.g., a labeled rectangular box).**

(emphasis added). The detachability of any combination of the plate, the ring piece, and the first mounting is a conventional feature and a detailed illustration is not essential for a proper understanding of the invention to one of ordinary skill in the art. Accordingly, Applicant has amended Fig. 2 to include dashed lines to provide an exemplary illustration of the detachability of the plate, the ring piece, and the first mounting piece. If the Examiner contends that a more detailed illustration is needed for a proper understanding of the invention to one of ordinary skill in the art, Applicant respectfully requests that the Examiner provide support for this contention. See, In re Zurko, 258 F.3d 1379, 59 U.S.P.Q.2d 1693 (Fed. Cir. 2001) (holding that the USPTO must point to some concrete evidence in the record to support core factual findings in a

determination of patentability); Memorandum by Stephen G. Kunin, Deputy Commissioner for Patent Examination Policy (February 21, 2002)(stating that it is never appropriate to rely on common knowledge without evidentiary support as sole or principal evidence on which to base rejection); 37 C.F.R. § 1.104 (providing that when a rejection in an application is based on facts within the personal knowledge of an Examiner, the data should be stated as specifically as possible, and the facts must be supported, when called for by the applicant, by an affidavit from the Examiner); MPEP § 2144.03 (providing that the Examiner may only take official notice of facts outside of the record which are capable of instant and unquestionable demonstration as being “well-known” in the art and, if the Applicant traverses such an assertion, the Examiner should cite a reference in support of his or her position.).

During the interview, the Examiner expressed the opinion that Applicant could not amend the drawings to illustrate the detachability of the plate, the ring piece, and the first mounting piece without adding new matter. The Examiner stated that the drawings must show exactly the location of the detachment of the parts and any amendment to the drawing to show such detachment would add new matter. Applicant respectfully disagrees with the Examiner. As discussed in greater detail below, it is not necessary to show exactly the location of the detachment of the parts; only an exemplary illustration of the detachability of the plate, the ring piece, and the first mounting piece is required and to amend the drawing for such an exemplary illustration does not add new matter since it was already disclosed in the specification and the claims.

MPEP 2163.07 provides, "Amendments to an application which are supported in the original description are NOT new matter." (Emphasis in original.) Additionally, MPEP 2163.06 provides:

[I]nformation contained in any one of the specification, claims or drawings of the application as filed may be added to any other part of the application without introducing new matter

...

The claims as filed in the original specification are part of the disclosure and therefore, if an application as originally filed contains a claim disclosing material not disclosed in the remainder of the specification, the applicant may amend the specification to include the claimed subject matter.

The addition of the dashed lines to Fig. 2 to show an exemplary illustration of the detachability of the plate, the ring piece, and the first mounting piece is supported in the original specification, the original drawings, and the original claims. Specifically, the original specification provides:

[019] In one embodiment, as shown in Fig. 2, the basket holder 110 may include a plate 210, a ring piece 220, and a first mounting piece 230. The plate 210, ring piece 220, and first mounting piece 230 may be detachable from the basket holder 110. For example, the first mounting piece 230 may be detachable from the ring piece 230. This may be useful to replace one mounting piece with a different mounting piece based, for example, on the second mounting piece 240 of the decorative cover 120, discussed below. Alternatively, the basket holder 110 may be one integral piece (i.e., undetachable).

[020] The plate 210 may have one or more small holes 250 for screws or other mounting objects to fit in order for the basket holder 110 to be attached to a wall or other surface. Alternatively, the plate 210 may be attached to the wall or other surface using an adhesive material, for example. The ring piece 220 may be in a shape that allows a wastebasket

130 to fit evenly and securely into it. Spacers may also be used to help securely fit a wastebasket 130 in the ring piece 220. The first mounting piece 230 may be made of any material, such as plastic, metal, velcro, aluminum, steel, any combination of the foregoing, or any other type of material including any rigid material. The first mounting piece 230 can be used to connect with, fit in, or attach to the second mounting piece 240 of the decorative cover 120. The first mounting piece 230 may also securely connect the decorative cover 120 to the basket holder 110.

The above structural and functional description of the plate, the ring piece, and the first mounting piece in conjunction with the original Fig. 2, for example, which includes lead lines pointing to the plate, the ring piece, and the first mounting piece, and the original claims, which recite detachability of the parts, provide support to amend Fig. 2, without adding new matter, to illustrate an exemplary embodiment of the detachability of the plate, the ring piece, and the first mounting piece.²

Regarding the specific location of the dashed lines, which the Examiner has raised as a requirement during the interview, the Federal Circuit has held:

As long as those of ordinary skill in the art realized that the dimensions could be easily obtained, § 112, 2d requires nothing more. The patent law does not require that all possible lengths corresponding to the spaces in hundreds of different automobiles be listed in the patent

² In Pandrol USA, LP v. Airboss Railway Products, Inc., 320 F.3d 1354; 65 U.S.P.Q.2D (BNA) 1985 (2003), the Federal Circuit held that the addition of a layer 12 to a drawing was "without significance" in response to Examiner's initial objection to the drawings under 37 C.F.R. §1.83(a). The specification originally recited that "[t]he plate 10 may be bonded by adhesive (epoxy resin adhesives are preferred) to the tie 1" The Examiner objected to the drawings because they did not include an illustration of the "adhering material." The applicant amended the drawing to add a layer 12 to illustrate the adhering material. In addition to amending the drawing, the applicant amended the specification to read that "[t]he plate 10 may be bonded by layer 12 of adhesive (epoxy resin adhesives are preferred) to the tie 1"

See Orthokinetics, Inc. v. Safety Travel Chairs, Inc., 806 F. 2d 1565, 1576, 1 USPQ2d 1081, 1088 (Fed. Cir. 1986). Accordingly, Applicant is not required to include in the specification all possible locations of the detachability of the parts of the exemplary embodiments of the present invention, since one of ordinary skill in the art could easily obtain these locations. Therefore, the addition of the dashed lined in an exemplary location is not new matter. If the Examiner contends that one of ordinary skill in the art could not easily obtain the locations of the detachability of the parts, then Applicant respectfully requests that the Examiner provide support for this contention. See, In re Zurko, 258 F.3d 1379, 59 U.S.P.Q.2d 1693 (Fed. Cir. 2001) (holding that the USPTO must point to some concrete evidence in the record to support core factual findings in a determination of patentability); Memorandum by Stephen G. Kunin, Deputy Commissioner for Patent Examination Policy (February 21, 2002)(stating that it is never appropriate to rely on common knowledge without evidentiary support as sole or principal evidence on which to base rejection); 37 C.F.R. § 1.104 (providing that when a rejection in an application is based on facts within the personal knowledge of an Examiner, the data should be stated as specifically as possible, and the facts must be supported, when called for by the applicant, by an affidavit from the Examiner); MPEP § 2144.03 (providing that the Examiner may only take official notice of facts outside of the record which are capable of instant and unquestionable demonstration as being "well-known" in the art and, if the Applicant traverses such an assertion, the Examiner should cite a reference in support of his or her position.).

35 U.S.C. § 112, FIRST PARAGRAPH, REJECTION

The Examiner rejected claim 3 under 35 U.S.C. § 112, first paragraph, on the ground that “in no way did the written description specifically describe or the drawings show exactly how ‘any combination of the plate, the ring piece, and the first mounting piece are detachable’.”

First, MPEP 2163 provides:

There is a **strong presumption** that an adequate written description of the claimed invention is present in the specification as filed. **Consequently, rejection of an original claim for lack of written description should be rare.**

(internal citation omitted)(emphasis added).

Second, 35 U.S.C. § 112, first paragraph, does not require that the specification “specifically describe” or “show exactly” details that are well known in the art. Accordingly, 35 U.S.C. § 112, first paragraph, does not require Applicant to “specifically describe” or “show exactly how” any combination of the plate, the ring piece, and the first mounting piece are detachable. Instead, 35 U.S.C. § 112, first paragraph, requires only that:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, **in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same, and shall set forth the best mode contemplated by the inventor of carrying out his invention.**

(emphasis added). Regarding this requirement, MPEP 2164.01 provides, “**A patent need not teach, and preferably omits, what is well known in the art.**” (emphasis

added)(citing In re Buchner, 929 F.2d 660, 661, 18 USPQ2d 1331, 1332 (Fed. Cir. 1991); Hybritech, Inc. v. Monoclonal Antibodies, Inc., 802 F.2d 1367, 1384, 231 USPQ 81, 94 (Fed. Cir. 1986); and Lindemann Maschinenfabrik GMBH v. American Hoist & Derrick Co., 730 F.2d 1452, 1463, 221 USPQ 481, 489 (Fed. Cir. 1984)).

Furthermore, MPEP 2164.08 provides:

The Federal Circuit has repeatedly held that “the specification must teach those skilled in the art how to make and use the full scope of the claimed invention without ‘undue experimentation’.” In re Wright, 999 F.2d 1557, 1561, 27 USPQ2d 1510, 1513 (Fed. Cir. 1993). **Nevertheless, not everything necessary to practice the invention need be disclosed. In fact, what is well-known is best omitted. In re Buchner, 929 F.2d 660, 661, 18 USPQ2d 1331, 1332 (Fed. Cir. 1991). All that is necessary is that one skilled in the art be able to practice the claimed invention, given the level of knowledge and skill in the art.**

(emphasis added).

Attachment and detachment of mechanical parts, such as the elements in question, is well known in the art and one of ordinary skill in the art would be able to detach the elements in question without “the written description specifically describe[ing] or the drawings show[ing] exactly how” to detach the elements. See e.g., U.S. Patent No. 6,594,834 (“The various parts of the invention can be manufactured with pre-drilled holes for easy assembly and disassembly using any conventional fastening means including nut/bolt assemblies, screw and lager assemblies, and pins of various kinds.”). Furthermore, Applicant is not required to describe the multitude of possible ways that the elements could be detached, since it would be clear to one of ordinary skill in the

art. See e.g. Orthokinetics, Inc. v. Safety Travel Chairs, Inc., 806 F. 2d 1565, 1576, 1 USPQ2d 1081, 1088 (Fed. Cir. 1986).

Based on the above, Applicant is not required to “specifically describe” or “show exactly” how any combination of the plate, the ring piece, and the first mounting piece are detachable as the Examiner erroneously asserts.

Third, MPEP 2163 provides:

The examiner has the initial burden, after a thorough reading and evaluation of the content of the application, of presenting evidence or reasons why a person skilled in the art would not recognize that the written description of the invention provides support for the claims,”

(emphasis added). In view of the teachings of 35 U.S.C. § 112, first paragraph, MPEP 2164.01, and MPEP 2164.08 as discussed above, the Examiner has presented no evidence or reasons why a person of ordinary skill in the art would not be able to practice the invention as recited in claim 3 given the level of knowledge and skill in the art. MPEP 2164.05 states, **“The examiner should never make [an enablement] determination based on personal opinion.”** Accordingly, if the Examiner contends that one of ordinary skill in the art would not know how to detach any combination of the plate, the ring piece, and the first mounting piece, Applicant respectfully requests that the Examiner provide support for this contention. See also In re Zurko, 258 F.3d 1379, 59 U.S.P.Q.2d 1693 (Fed. Cir. 2001) (holding that the USPTO must point to some concrete evidence in the record to support core factual findings in a determination of patentability); Memorandum by Stephen G. Kunin, Deputy Commissioner for Patent Examination Policy (February 21, 2002)(stating that it is never appropriate to rely on

common knowledge without evidentiary support as sole or principal evidence on which to base rejection); 37 C.F.R. § 1.104 (providing that when a rejection in an application is based on facts within the personal knowledge of an Examiner, the data should be stated as specifically as possible, and the facts must be supported, when called for by the applicant, by an affidavit from the Examiner); MPEP § 2144.03 (providing that the Examiner may only take official notice of facts outside of the record which are capable of instant and unquestionable demonstration as being “well-known” in the art and, if the Applicant traverses such an assertion, the Examiner should cite a reference in support of his or her position.); MPEP 2164.05 (“The examiner should never make [an enablement] determination based on personal opinion.”).

35 U.S.C. § 112, SECOND PARAGRAPH, REJECTION

The Examiner has rejected claims 2-10 and 14 under 35 U.S.C. § 112, second paragraph, because “[r]egarding claim 2, it is not clear if the ‘storage unit’ and ‘surface’ are being recited functionally or positively.” The Examiner states that claim 1 recites “storage unit” and “surface” functionally, but that claims 2 and 9 recite “storage unit” and “surface” positively. The Examiner states that “[t]he applicant must make it clear whether the ‘storage unit’ and ‘surface’ are being recited functionally or positively.”

Applicant respectfully disagrees with Examiner. It is clear that claims 2 and 9 recite “storage unit” and “surface” functionally. Claim 2, which depends on claim 1, recites, “a plate that attaches to *the surface*” and “a ring piece attached to the plate that receives *the storage unit* and holds *the storage unit* in place”, referring back to the surface and storage unit recited in claim 1. Similarly, claim 9 recites, “a plate that

attaches to *the surface*" and "a platform on which *the storage unit* sits, wherein the platform is attached to the plate." In claims 2 and 9, with respect to the surface and storage unit, the plate and ring piece are defined in terms of attributes they possess and in terms of their functional interrelationship with the surface and storage unit when the plate and ring piece are used in its intended manner, rather than positively reciting the surface and storage unit. See, e.g., Ex parte Miller, No. 97-0972 (Bd. Pat. App. & Inter. 1998) (unpublished). In Ex parte Miller, the Examiner rejected a claim under 35 U.S.C. § 112, second paragraph, because the preamble recited "a theater seat hold-down device for maintaining a seat member" but the body of the claim recited "an elongated member . . . configured to engage at least one said seat member." The Examiner argued that "seat member" was functionally recited in the preamble but positively recited in the body and therefore presented an inconsistency thereby justifying a rejection under 35 U.S.C. § 112, second paragraph. The Board reversed the Examiner's rejection, holding:

We do not agree with the examiner's position. The examiner apparently recognizes that the appellants, by setting forth functional recitations such as that of the hold-down device being "adapted" to engage the theater seat, have not positively recited the theater seat as a part of the claimed combination. Nevertheless, the examiner has taken the position that limitations such as that of the of hold-down device being "configured" (i.e, shaped) to engage a portion of a theater seat (previously set forth in the preamble), positively claim the theater seat as part of the claimed combination. **We must point out, however, that by reciting such language the appellants have merely defined the hold-down member in terms of attributes it must possess and, therefore, this language is also functional in character. That is, the appellants are merely defining the shape or structural configuration of**

the hold-down device in terms of its functional interrelationship with the theater seat when it is used in its intended manner, rather than positively reciting the theater seat as a part of the claimed combination. Since we are not of the opinion that the theater seat has been positively set forth as a part of the claimed combination, we find no inconsistency between the preamble and the body of the claim as the examiner asserts. This being the case, we will not sustain the rejection of claims 1-12 under 35 U.S.C. § 112, second paragraph.

(emphasis added). The Examiner provides no support for why the claims are indefinite based on what the Examiner has pointed to as the alleged problem.

MPEP 2173.02 provides:

[I]f the language used by applicant satisfies the statutory requirements of 35 U.S.C. 112, second paragraph, but the examiner merely wants the applicant to improve the clarity or precision of the language used, the claim must not be rejected under 35 U.S.C. 112, second paragraph, rather, the examiner should suggest improved language to the applicant.

Based on Applicant's traversal above, the claims as currently written satisfy the requirements of 35 U.S.C. § 112, second paragraph. If Examiner wants Applicant to consider further clarifying claims 2 and 9 for the Examiner's satisfaction, then, pursuant to MPEP 2173.02 the Examiner should provide suggested language to Applicant and not reject the claims under 35 U.S.C. § 112, second paragraph.

BARBOUR IS NONANALOGOUS ART AND CANNOT BE CONSIDER

Claims 1, 2, 4-6, and 9-14 are rejected under 35 U.S.C. § 102(b) as being anticipated by Barbour and claims 7 and 8 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Barbour. However, Barbour is not analogous prior art and,

therefore, cannot be used as a basis for rejecting the claims, as discussed in greater detail below.³

MPEP 2141.01 provides:

In order to rely on a reference as a basis for rejection of an applicant's invention, the reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned.

(citing In re Oetiker, 977 F.2d 1443, 1446, 24 USPQ2d 1443, 1445 (Fed. Cir. 1992)).

Accordingly, for the Examiner to rely on Barbour as a basis for rejecting the claims, Barbour must either (1) be in the field of Applicant's endeavor or (2) if not in the field of Applicant's endeavor, be reasonably pertinent to the particular problem with which Applicant was concerned. Barbour is neither in the field of Applicant's endeavor nor reasonably pertinent to the particular problem with which Applicant was concerned, as discussed below.

³ The Examiner has rejected the claims under § 102 and § 103. MPEP 2141.01(a) provides that to rely on a reference under § 103, it must be analogous prior art. However, regarding a rejection under § 102, MPEP 2131.05 provides that "The question of whether a reference is analogous art is not relevant to whether that reference anticipates. A reference may be directed to an entirely different problem than the one addressed by the inventor, or may be from an entirely different field of endeavor than that of the claimed invention, yet the reference is still anticipatory if it explicitly or inherently discloses every limitation recited in the claims." However, Barbour does not anticipate the claims because it does not disclose each and every element of the claim, as discussed in this Amendment.

Barbour is not in the field of Applicant's endeavor

The Federal Circuit has narrowly construed the field of an inventor's endeavor. For example, in In re Clay, the Federal Circuit reversed the PTO's rejection of the applicant's invention over two reference holding:

The PTO argues that Sydansk and Clay's inventions are part of a common endeavor -- "maximizing withdrawal of petroleum stored in petroleum reservoirs." **However, Sydansk cannot be considered to be within Clay's field of endeavor merely because both relate to the petroleum industry.** Sydansk teaches the use of a gel in unconfined and irregular volumes within generally underground natural oil-bearing formations to channel flow in a desired direction; Clay teaches the introduction of gel to the confined dead volume of a man-made storage tank. The Sydansk process operates in extreme conditions, with petroleum formation temperatures as high as 115 degrees C and at significant well bore pressures; Clay's process apparently operates at ambient temperature and atmospheric pressure. **Clay's field of endeavor is the storage of refined liquid hydrocarbons. The field of endeavor of Sydansk's invention, on the other hand, is the extraction of crude petroleum.** The Board clearly erred in considering Sydansk to be within the same field of endeavor as Clay's.

966 F.2d 656, 23 USPQ2d 1058 (Fed. Cir. 1992) (emphasis added). MPEP 2141.01(a) characterizes the Federal Circuit's opinion in In re Clay as follow:

The court disagreed with the PTO's argument that the reference and claimed inventions were part of the same endeavor, "maximizing withdrawal of petroleum stored in petroleum reserves," and found that the inventions involved different fields of endeavor since the reference taught the use of the gel in a different structure for a different purpose under different temperature and pressure conditions, and since the application related to storage of liquid hydrocarbons rather than extraction of crude petroleum.

As can be seen above, the Federal Circuit construed the inventor's field of endeavor narrowly. While the patent application and reference both related to the petroleum industry, the Federal Circuit characterized them as being in entirely separate fields. In re Oetiker is another example of the Federal Circuit's narrow construction of the field of an inventor's endeavor. 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992).

Regarding In re Oetiker, MPEP 2141.01(a) notes:

Applicant claimed an improvement in a hose clamp which differed from the prior art in the presence of a preassembly "hook" which maintained the preassembly condition of the clamp and disengaged automatically when the clamp was tightened. The Board relied upon a reference which disclosed a hook and eye fastener for use in garments, reasoning that all hooking problems are analogous. **The court held the reference was not within the field of applicant's endeavor, and was not reasonably pertinent to the particular problem with which the inventor was concerned because it had not been shown that a person of ordinary skill, seeking to solve a problem of fastening a hose clamp, would reasonably be expected or motivated to look to fasteners for garments.**

Regarding the field of Applicant's endeavor in the present application, Applicant was concerned with the problem posed by having a wastebasket located on a floor, for example in a toddler's room, because, for example, it may allow undesired access to the wastebasket by a child to retrieve items from the wastebasket or to dispose of items not intended for a wastebasket. Additionally, Applicant was concerned with the aesthetics of a wastebasket. Accordingly, Applicant's invention is related to an apparatus for securing a wastebasket to a surface having a decorative cover to conceal the wastebasket. Thus, as set forth in the Field of Invention, Applicant's invention relates to a decorative hanging wastebasket, which is the field of Applicant's endeavor.

Barbour concerns a holder for a glass, tooth brushes, and a tube of toothpaste that can be secured against a wall or other support. Barbour discloses that the objects of the invention include: (1) providing improved means for opening and closing the tube of toothpaste and constructing the means for opening and closing the tube of toothpaste to prevent it from being bent out of shape; (2) providing means for supporting a tooth brush so that paste can be evenly distributed along the brush as it is slid under the tube of toothpaste, and (3) providing a device so that "a glass may be very easily set in place or removed from a ring which supports tooth brushes not in use and prevents a glass from becoming wedged into place."

Barbour in no way concerns securing a wastebasket to a surface and providing a decorative cover to conceal the wastebasket. As discussed above, Barbour concerns a holder for a glass, tooth brushes, and a tube of toothpaste, means for opening and closing the tube of tooth paste and means for applying the tooth paste. Although, Barbour discloses securing a holder to a surface, Barbour and the present invention are in entirely separate fields of endeavor. See, e.g., In re Ray, 966 F.2d 656, 23 USPQ2d 1058 (Fed. Cir. 1992) (holding, "Sydansk cannot be considered to be within Clay's field of endeavor merely because both relate to the petroleum industry.").

For the above reasons, Barbour cannot be considered to be in the same field of endeavor as Applicant's invention.

Barbour is not reasonably pertinent to the particular problem with which the inventor was concerned

As with the field of an inventor's endeavor, the Federal Circuit has narrowly construed the problem the inventor sought to overcome. For example in In re Clay, the Federal Circuit held:

Sydansk's gel treatment of underground formations functions to fill anomalies [FN1] so as to improve flow profiles and sweep efficiencies of injection and production fluids through a formation, while Clay's gel functions to displace liquid product from the dead volume of a storage tank. Sydansk is concerned with plugging formation anomalies so that fluid is subsequently diverted by the gel into the formation matrix, thereby forcing bypassed oil contained in the matrix toward a production well. Sydansk is faced with the problem of recovering oil from rock, i.e., from a matrix which is porous, permeable sedimentary rock of a subterranean formation where water has channeled through formation anomalies and bypassed oil present in the matrix. Such a problem is not reasonably pertinent to the particular problem with which Clay was involved -- preventing loss of stored product to tank dead volume while preventing contamination of such product. Moreover, the subterranean formation of Sydansk is not structurally similar to, does not operate under the same temperature and pressure as, and does not function like Clay's storage tanks. See In re Ellis, 476 F.2d 1370, 1372, 177 USPQ 526, 527 (CCPA 1973) ("the similarities and differences in structure and function of the invention disclosed in the references . . . carry far greater weight [in determining analogy]").

A person having ordinary skill in the art would not reasonably have expected to solve the problem of dead volume in tanks for storing refined petroleum by considering a reference dealing with plugging underground formation anomalies. The Board's finding to the contrary is clearly erroneous.

966 F.2d 656, 23 USPQ2d 1058 (Fed. Cir. 1992). In re Oetiker is another example of the Federal Circuit's narrow construction of the problem the inventor sought to

overcome. 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). Regarding In re Oetiker,

MPEP 2141.01(a) notes:

Applicant claimed an improvement in a hose clamp which differed from the prior art in the presence of a preassembly "hook" which maintained the preassembly condition of the clamp and disengaged automatically when the clamp was tightened. The Board relied upon a reference which disclosed a hook and eye fastener for use in garments, reasoning that all hooking problems are analogous. **The court held the reference was not within the field of applicant's endeavor, and was not reasonably pertinent to the particular problem with which the inventor was concerned because it had not been shown that a person of ordinary skill, seeking to solve a problem of fastening a hose clamp, would reasonably be expected or motivated to look to fasteners for garments.**

(emphasis added). The Federal Circuit stated the test for determining whether a reference is reasonable pertinent to the particular problem with which the inventor was concerned as follows:

A reference is reasonably pertinent if, even though it may be in a different field from that of the inventor's endeavor, it is **one which, because of the matter with which it deals, logically would have commended itself to an inventor's attention in considering his problem.** Thus, the purposes of both the invention and the prior art are important in determining whether the reference is reasonably pertinent to the problem the invention attempts to solve.

In Re Clay; 966 F.2d at 659, 23 USPQ2d at 1060-61 (Fed. Cir. 1992). See also MPEP 2141.01(a).

Regarding the "reasonable" requirement, the Federal Circuit has held:

[I]t is necessary to consider 'the reality of the circumstances' – in other words, common sense – in deciding in which fields a person of ordinary skill would reasonably be expected to look for a solution to the problem facing the inventor."

In re Oetiker, 977 F.2d at 1447 (Fed. Cir. 1992) (emphasis in original).

The particular problem with which the present invention was involved concerned concealing a wastebasket that has been secured to a surface.

The purpose of Barbour is to provide a bathroom accessory for holding a glass, tooth brushes, and a tube of toothpaste that can be secured against a wall or other support. Barbour discloses that the objects of the invention include: (1) providing improved means for opening and closing the tube of toothpaste and constructing the means for opening and closing the tube of toothpaste to prevent it from being bent out of shape; (2) providing means for supporting a tooth brush so that paste can be evenly distributed along the brush as it is slid under the tube of toothpaste, and (3) providing a device that “a glass may be very easily set in place or removed from a ring which supports tooth brushes not in use and prevents a glass from becoming wedged into place.”

Barbour is not reasonably pertinent because it logically would not have commended itself to an inventor's attention in considering the problem of concealing a wastebasket that has been secured to a surface. A person of ordinary skill would not reasonably be expected to look to the field of holders for a glass, tooth brushes, and a tube of toothpaste for a solution to concealing a wastebasket that has been secured to a surface.

Since the Examiner bears the initial burden of factually supporting any prima facie conclusion that a reference is analogous prior art, Applicant respectfully requests that the Examiner do so if the Examiner continues to apply Barbour to reject the claims.

See e.g. In Re Ray, 966 F.2d 656, 23 USPQ2d 1058 (Fed. Cir. 1992); MPEP 2141; MPEP 2141.01(a).

35 U.S.C. § 102 REJECTION

Claims 1, 2, 4-6, and 9-14 are rejected under 35 U.S.C. § 102(b) as being anticipated by Barbour. Applicant respectfully submits that Barbour does not disclose each and every element recited in Claims 1, 2, 4-6, and 9-14 and, therefore, does not anticipate these claims. MPEP 2131. Furthermore, the various functional limitations in the claims set forth a function which the apparatus must be structurally capable of performing and such a functional statement must be given full weight and may not be disregarded in evaluating the patentability of the claims. See, e.g., In re Venezia, 530 F.2d 956, 189 USPQ 149 (CCPA 1976); MPEP 2173.05(g).

Claim 1 and New Claims 19-31

Barbour does not disclose “a cover attached to the holder, wherein the cover is sized to conceal in whole or in part the storage unit.” The Examiner contends that element 17 of Barbour (i.e., the tube of tooth paste) is the cover recited in claim 1.

MPEP 2111 provides:

During patent examination, the pending claims must be given broadest reasonable interpretation consistent with the specification. *In re Hyatt*, 211 F.3d 1367, 1372, 54 USPQ2d 1664, 1667 (Fed. Cir. 2000).

...

The broadest reasonable interpretation of the claims must also be consistent with the interpretation that those skilled in the art would reach. *In re Cortright*, 165 F.3d 1353, 1359, 49 USPQ2d 1464, 1468 (Fed. Cir. 1999) (The Board’s

construction of the claim limitation "restore hair growth" as requiring the hair to be returned to its original state was held to be an incorrect interpretation of the limitation. The court held that, consistent with applicant's disclosure and the disclosure of three patents from analogous arts using the same phrase to require only some increase in hair growth, one of ordinary skill would construe restore hair growth to mean that the claimed method increases the amount of hair grown on the scalp, but does not necessarily produce a full head of hair.).

See also MPEP 2111.01; In re Marosi, 710 F.2d 799, 218 USPQ 289 (Fed. Cir. 1983) ("Claims are not to be read in a vacuum, and limitations therein are to be interpreted in light of the specification in giving them their 'broadest reasonable interpretation'." 710 F.2d at 802, 218 USPQ at 292 (quoting In re Okuzawa, 537 F.2d 545, 548, 190 USPQ 464, 466 (CCPA 1976)) (emphasis in original).

The tube of tooth paste 17 is not a cover because to interpret cover to include a tube of tooth paste is not reasonable, not consistent with the specification, and not consistent with the interpretation one of ordinary skill in the art would reach. Furthermore, Barbour does not disclose or teach that the tooth paste tube 17 conceals in whole or in part a storage unit. The Examiner contends that "the cover is inherently sized to conceal in part a storage unit." MPEP 2112 provides:

The fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic. . . . In relying upon the theory of inherency, the examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art.

It does not "necessarily flow from the teachings" of Barbour that the tooth paste tube 17 conceals a storage unit. See Figure 1, element 17' and column 3 lines 65-71 ("The

brush may be moved longitudinally while resting upon the support 29 and during this movement the key 17' of the tube will be turned to expel paste from the neck 18 thereof, and the paste will be distributed along the entire length of the brush.>"). In other words Barbour discloses and teaches that the tooth paste tube 17 is not intended to conceal and in fact reveals the glass with each use of the tube because, as shown in Figure 2 and disclosed in the specification, tooth paste tube key 17' is turned to expel the tooth paste by winding-up the tube.

New claim 19 recites, "the cover is sized and positioned on the holder to conceal in whole the storage unit from being viewed in a first direction." New claim 23, a method claim, recites, "concealing in whole the storage unit when the storage unit is secured to the surface and viewed in a first direction." New claims 20 and 24, which depend from claims 19 and 24, respectively, recites that the first direction is directed toward a front elevation. Barbour does not teach or suggest that the alleged cover (i.e., the tooth paste tube 17) conceals in whole the storage unit when viewed from a first direction or a direction directed toward a front elevation.

New claim 21 recites, "the cover is sized and positioned on the holder to conceal in whole the storage unit *and holder* from being viewed in a first direction." New claim 22, which depends from claim 21, recites that the first direction is directed toward a front elevation. Barbour does not teach or suggest that the alleged cover (i.e., the tooth paste tube 17) conceals in whole a storage unit and holder when viewed from a first direction or a direction directed toward a front elevation. In fact, as shown in Figures 1 and 3 of Barbour, the alleged holder is not concealed by the alleged cover 17.

New claim 25, which depends from method claim 23, recites, "concealing in whole the storage unit when the storage unit is secured to the surface and viewed from a second direction." New claim 26, which depends from claim 25, recites that the second direction is directed toward a side elevation. Barbour does not teach or suggest concealing in whole a storage unit when viewed from a first and second direction or a direction directed toward a front and side elevation.

New claim 27 recites, "a cover connected to the holder and structured and positioned on the holder to conceal a container held by the holder from being viewed in at least one direction." New claims 28, which depends from claim 27, recites that the at least one direction is directed toward a front elevation. Barbour does not teach or suggest that the alleged cover (i.e., tooth paste tube 17) conceals a container when viewed in at least one direction or a direction directed toward a front elevation.

New claim 29 recites, "a cover . . . that includes at least one surface with dimensions equivalent to or greater than at least one surface of a wastebasket supported by the holder and wherein the cover is connected to the third section of the holder in an orientation that hides the at least one surface of the wastebasket from being seen from at least one direction." New claims 30, which depends from claim 29, recites that the at least one direction is directed toward a front elevation. Barbour does not teach or suggest that the alleged cover (i.e., tooth paste tube 17) includes "at least one surface with dimensions equivalent to or greater than at least one surface of a wastebasket." Neither does Barbour teach or suggest that "the cover is connected to

the third section of the holder in an orientation that hides the at least one surface of the wastebasket from being seen from at least one direction” or a front elevation.

As can be seen above, new claims 19-31 remove the “conceal in part” limitations of claims 1-14. However, by adding claims 19-31, Applicant does not disclaim an apparatus comprising a cover that may not conceal in whole a storage unit when viewed from a first direction. In fact, Applicant believes that claims 1-14 are patentable in view of Barbour and has not cancelled these claims. Nevertheless, Applicant originally added the “conceal in part” language out of concern of a would be infringer attempting to avoid the claimed invention by concealing all but a small portion of the storage unit when viewed from at least one direction. The “conceal in part” language was not intended to encompass a cover that conceals an insignificant portion of a storage unit, such as the alleged “cover” in Barbour. Applicant believes that by claiming that the cover “conceals in whole” or “hides” as in new claims 19-31, pursuant to the doctrine of equivalents or other legal theory, a would be infringer would not be able to avoid the claimed invention by concealing all but an insignificant portion of a storage unit when viewed from at least one direction. Accordingly, the new claims are not being added to disclaim covers that may not conceal in whole a storage unit when viewed from a first direction or any other scope the Applicant would be entitled to under the doctrine of equivalents or other legal theory based on the language of new claims 19-20.

Claim 4 and New Claim 16

Claim 4 recites that “wherein the cover comprises a second mounting piece connected to the first mounting piece.” The Examiner identifies element 17 (tooth paste

tube) as the cover and elements 18-22 and 27-29 as the second mounting piece. For Barbour to anticipate this claim, the tooth paste tube 17 must comprise elements 18-22 and 27-29. This clearly is not the case. That element 31 touches the tooth paste tube 17 when a tooth brush 30 is removed from element 29, does not make elements 18-22 and 27-29 part of the tooth paste tube 17. See, e.g., Barbour, Fig. 2 and col. 3, lines 39-54.

Although Applicant believes that claim 4 is sufficient, Applicant has added a new claim 16 to clarify that the second mounting piece is a part of the cover and is not any element that happens to come into contact with the cover. More specifically, new claim 16 recites, "a second mounting piece attached to the cover and first mounting piece." Barbour does not disclose that elements 18-22 and 27-29 attach to the tooth paste tube 17.

Claim 5

Claim 5 recites "wherein the second mounting piece is detachable from the first mounting piece." The Examiner identifies elements 13 and 23 as the first mounting piece and elements 18-22 and 27-29 as the second mounting piece. Barbour does not disclose that elements 13 and 23 are detachable from elements 18-22 and 27-29. In fact, Barbour discloses that these elements are designed to "**prevent disengagement.**" See Barbour, col. 3 line 10. If the Examiner continues to maintain this position, Applicant respectfully requests the Examiner to particularly point out where this is disclosed so that Applicant may have the opportunity to reply completely. See 37 CFR 1.104 ("When a reference is complex . . . the particular part relied on must be

designated as nearly as practicable.”); MPEP 706 (“The goal of examination is to clearly articulate any rejection early in the prosecution process so that the applicant has the opportunity to provide evidence of patentability and otherwise reply completely at the earliest opportunity.”).

Claims 9-10 and New Claims 17 and 18

Claim 9 recites “a platform on which the storage unit sits, wherein the platform is attached to the plate”. The Examiner identifies element 1 as the platform and element 5 as the plate, however, a storage unit does not sit on element 1. Barbour discloses that “[a]rms or strips 8 . . . are bent inwardly to form feet 9 projecting toward each other and adapted to engage under a glass and support the same.” See Barbour, col. 1 lines 55-60. Accordingly, Barbour discloses that a glass sits on element 9 and not element 1. However, element 9 is not attached to element 5 as would be required by the claims.

New claim 17 recites, “wherein the fencer is sized and positioned on the holder to conceal in whole the storage unit from being viewed in a second direction.” New claim 18, which depend from 17, recites that the second direction is directed toward a side elevation. The Examiner identifies element 8 as the fencer. However, element 8 does not conceal in whole a storage unit from being viewed in a second direction or a direction directed toward a side elevation. See Barbour, Fig. 2.

Based on the above, claims 1-6 and 9-31 are patentable over Barbour.

35 U.S.C. § 103 REJECTION

MPEP 2143.03 states that to establish a prima facie case of obviousness of a claimed invention, *all the claim limitations must be taught or suggested by the prior art.*

Claims 7 and 8 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Barbour. However, Barbour does not teach or suggest all the claim limitations recited in these claims.

The Examiner concedes that the first mounting piece, which the Examiner identifies as elements 13 and 23, does not comprise a slot for receiving a second mounting piece, which the Examiner identifies as elements 18-22 and 27-29.

However, to modify Barbour to account for this missing feature, the Examiner must point to some teaching, suggestion, or motivation found either in Barbour or the knowledge generally available to one of ordinary skill in the art to modify Barbour such that the first mounting piece comprises a slot. See MPEP § 2143.01 (reciting that obviousness can only be established by combining or modifying the teachings of the prior art where there is some teaching, suggestion, or motivation to do so found either (1) in the references themselves or (2) in the knowledge generally available to one of ordinary skill in the art.).

Furthermore, MPEP 2144.04 provides:

“The mere fact that a worker in the art could rearrange the parts of the reference device to meet the terms of the claims on appeal is not by itself sufficient to support a finding of obviousness. The prior art must provide a motivation or reason for the worker in the art, without the benefit of appellant’s specification, to make the necessary changes in the reference device.” Ex parte Chicago Rawhide Mfg. Co., 223 USPQ 351, 353 (Bd. Pat. App. & Inter. 1984).

The Examiner contends that Barbour teaches a second mounting piece that includes a slot 24 and states that “it would have been obvious to one of ordinary skill in the art . . . to have reversed the parts so that the first mounting piece include (sic) a slot

for receiving the second mounting piece since a reversal of parts is held to be an obvious expedient." The Examiner cites to In re Gazda to support this contention. However, In re Gazda does not hold that *all* reversal of parts are obvious expedient. As MPEP 2144.04 provides, In re Gazda only stands for the proposition that where "[p]rior art disclosed a clock fixed to the stationary steering wheel column of an automobile while the gear for winding the clock moves with steering wheel; mere reversal of such movement, so the clock moves with wheel, was held to be an obvious expedient."

Unlike the simple clock and wheel in In re Gazda, the slot 24 in Barbour is part of a complicated construction to open and close a tube of toothpaste 17. Specifically, to open and close the toothpaste tube 17, Barbour discloses (1) a yoke 18 having arms 19 and 20, wherein the arm 20 has an opening 20 with a lip 26 at the upper end of the opening 24 and (2) a strip 23 having a bill 25. Barbour provides the following disclosure to illustrate how to open and close the toothpaste tube 17:

It is important that the neck of the tube be closed during intervals between use of the tooth paste and thus prevent the tooth paste from drying. In order to close the tube there has been provided a yoke 18 formed of resilient sheet metal and having its arms 19 and 20 extending upwardly from its bridge which extends diametrically of the glass receiving opening transversely of the depending arms of strips 8 and in a plane lower than the inturned end portions 9 of the arms 8 so that when a glass is set in place and rests upon the feet 9 it will be supported above the bridge of the yoke. The upper end portion of the arm 19 is bent outwardly to form an attaching portion 21 which is firmly secured against the under face of the annular body and adjacent portion of the tongue 4 by bolts or equivalent fasteners 22. Therefore, the yoke will be very firmly secured to the annular body of the holder but may be swung downwardly so that the arm 20 will be moved downwardly along the strip 23 carried by the annular body of the holder and passing downwardly through

an opening 24 formed in the arm 20 of the yoke. This strip or arm 23 which serves to guide and limit downward flexing of the yoke projects forwardly under the tongue 13 and at its lower end is bent to form a bill 25 which projects upwardly and is adapted to be engaged by the outwardly bent lip 26 at the upper end of the opening 24 and thus prevent downward flexing of the yoke beyond the position indicated by dotted lines in Figure 2 and also prevent disengagement of this portion of the yoke from the strip 23. The upper portion of the arm 20 of the yoke is bent outwardly, as shown at 27, to form a tongue which has its free end portion projecting beyond the outer end of the tongue 13 and terminates in an upwardly inclined lip 28. The inner end portion 29 of the tongue 27 extends at an incline between the main portion of the tongue and the upper end of the opening 24 and by referring to Figure 2 it will be seen that this inclined portion serves as a support for a tooth brush 30 when the tooth brush is in position to receive paste and permit the tooth brush to be easily slid longitudinally under the neck of the tube as paste is discharged from the tube.

. . .During intervals between use, the brushes remain suspended in the socket 11. The resiliency of the yoke holds the yoke in the position shown in full lines in Figure 2 with the upper face of the tongue 27 bearing against the lower end of the neck of the tube and the projection 31 which is pressed upwardly from the tongue 27 seated in the lower end of the neck. Therefore, the neck will be closed and paste in the neck prevented from drying due to exposure to air. When a tooth brush is to be used it is removed from the socket in which it is suspended and may be first moistened or immediately applied to the upwardly inclined end portion of lip 28 of the tongue 27 and disposed transversely thereof. Pressure is then applied to this projecting end portion of the tongue 27 to force the same downwardly away from the lower end of the neck of the tube and during this procedure the brush is slid along the tongue 27 toward the inner end thereof to a position in which it will rest upon the inclined inner end portion 29 of the tongue. By this time the yoke will have been swung downwardly to the position indicated by dotted lines in Figure 2 and further downward movement thereof will be prevented by engagement of the lip 26 with the bill or hook 25. The brush may be moved longitudinally while resting upon the support 29 and during this movement

the key 17' of the tube will be turned to expel paste from the neck 16 thereof, and the paste will be distributed along the entire length of the brush. As the arm or tongue 23 extends through the opening 24 formed in the arm 20 of the yoke transverse movement of the arm 20 and tongue 27 will be prevented and, therefore, when the brush is removed and the yoke returns to its normal position, the yoke will be in the proper position for the extension 31 to enter and close the lower end of the neck of the tube.

See Barbour, col. 2, line 39 through col. 3, line 25 and col. 3, line 39 through col. 4, line 3.

To achieve this same complicated function of opening and closing the toothpaste tube 17 by reversing the parts such that a slot is included in elements 13 and 23 is not "an obvious expedient" as may have been the case in In re Gazda and the Examiner does not explain how this could be achieved. Furthermore, as required by MPEP 2143.01 and 2144.04, the Examiner has failed to point out some teaching, suggestion, or motivation in either Barbour or in the knowledge generally available to one of ordinary skill in the art to make such a modification. See also In re Warner, 379 F.2d 1011, 1017, 154 USPQ 173, 178 (CCPA 1967), cert. denied, 389 U.S. 1057 (1968) (holding, "Rejections based on 35 U.S.C. § 103 must rest on a factual basis. . . . In making such a rejection, the examiner has the initial duty of supplying the requisite factual basis and may not, because of doubts that the invention is patentable, resort to speculation, unfounded assumptions or hindsight reconstruction to supply deficiencies in the factual basis.") If the Examiner continues to contend that it would have been obvious to one of ordinary skill in the art to include a slot in elements 13 and 23, which the Examiner identifies as the first mounting piece, Applicant respectfully request that the Examiner

provides support for this contention. See, In re Zurko, 258 F.3d 1379, 59 U.S.P.Q.2d 1693 (Fed. Cir. 2001) (holding that the USPTO must point to some concrete evidence in the record to support core factual findings in a determination of patentability); Memorandum by Stephen G. Kunin, Deputy Commissioner for Patent Examination Policy (February 21, 2002)(stating that it is never appropriate to rely on common knowledge without evidentiary support as sole or principal evidence on which to base rejection); 37 C.F.R. § 1.104 (providing that when a rejection in an application is based on facts within the personal knowledge of an Examiner, the data should be stated as specifically as possible, and the facts must be supported, when called for by the applicant, by an affidavit from the Examiner); MPEP § 2144.03 (providing that the Examiner may only take official notice of facts outside of the record which are capable of instant and unquestionable demonstration as being “well-known” in the art and, if the Applicant traverses such an assertion, the Examiner should cite a reference in support of his or her position.).

DUTY TO ANSWER ALL MATERIAL TRAVERSED

Applicant has raised numerous arguments above traversing the Examiner’s rejections under § 102 and § 103. Applicant has provided a checklist below of some of the major issues that Applicant respectfully requests the Examiner to address. The Examiner is respectfully reminded of the duty to answer all material traversed. See, e.g., MPEP 707.07(f).

1. The detachability of any combination of the plate, the ring piece, and the first mounting is a conventional feature and a detailed illustration is not essential for a proper

understanding of the invention to one of ordinary skill in the art. If the Examiner contends that a more detailed illustration is need for a proper understanding of the invention to one of ordinary skill in the art, Applicant respectfully request that the Examiner provide support for this contention.

2. It is not necessary to show exactly the location of the detachment of the parts; only an exemplary illustration of the detachability of the plate, the ring piece, and the first mounting piece is required and to amend the drawing for such an exemplary illustration does not add new matter. If the Examiner contends that one of ordinary skill in the art could not easily obtain the locations of the detachability of the parts, then Applicant respectfully requests that the Examiner provide support for this contention.

3. If the Examiner contends that one of ordinary skill in the art would not know how to detach any combination of the plate, the ring piece, and the first mounting piece, Applicant respectfully requests that the Examiner provide support for this contention.

4. Since the Examiner bears the initial burden of factually supporting any prima facie conclusion that a reference is analogous prior art, Applicant respectfully requests that the Examiner do so if the Examiner continues to apply Barbour to reject the claims.

5. Barbour does not disclose that elements 13 and 23 are detachable from elements 18-22 and 27-29. In fact, Barbour discloses that these elements are designed to "prevent disengagement." See Barbour, col. 3 line 10. If the Examiner continues to maintain this position, Applicant respectfully requests the Examiner to particularly point out where this is disclosed so that Applicant may have the opportunity to reply completely.

6. If the Examiner continues to contend that it would have been obvious to one of ordinary skill in the art to include a slot in elements 13 and 23, which the Examiner identifies as the first mounting piece, Applicant respectfully requests that the Examiner provides support for this contention.

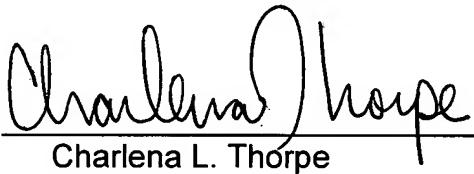
CONCLUSION

Please grant any extensions of time required to enter this response and charge any additional required fees.

Respectfully submitted,

THE THORPE FIRM, INC.

Dated: July 5, 2005

By: 
Charlena L. Thorpe
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